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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/806,941  
Filing Date: May 21, 2001  
Appellant(s): OLOFSSON ET AL.

**MAILED**

OCT 03 2007

**GROUP 3600**

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Thomas P. Pavelko  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/24/06 appealing from the Office action mailed 2/24/06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4671038	PORTER	6-1987
4435935	LARREA	3-1984
5054256	GLOVER ET AL	10-1991
8202375-5	SVENSKA	10-1983

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present in claim is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

This policy applies to the rejection of claim 6 below.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 11-12, 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svenska (SE8202375-5) in view of Glover et al (5054256), Porter (4671038) and Larrea (4435935).

Svenska (figure 1) shows a floor comprising a plurality of floor boards (1) with edges (2), at least one of the edges (2) having a distal end lying in a vertical plane, lower side (9) and a decorative top surface, a notch (7, figure 3) formed in the edge below the decorative upper surface, at least part of the notch being defined by a shoulder ( the shoulder at 18), the shoulder terminating at a distal end, the floor boards joinable by means of separate joining profiles (4), at least one of the edges is provided with at least one groove (8) which groove is arranged parallel to its respective edge and that the joining profiles are provided with lips (11) arranged in pairs, the lips are intended to be received by the at least one groove of a respective floor board so that adjacent floor boards with the grooves at the adjacent edges are guided and fixed horizontally by

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the lips of the joining profiles, the lips are connected to each other by a middle section (4) of the joining profile, the groove of the floor board is on the lower side and is arranged at a distance from the closest edge (figure 1, the width is along the edge 9 or transverse to it) less than half of the width of a floor board, the floor boards are provided with a groove/notch (7) at the edges and the distance between each groove and the closes edge is about the same (inherently so as the edge meets at the center 4 of the profile), the distance between a center of one lip to a center of the second lip of the joining profile is less than the distance between a center of one groove on a first board to a center of a second groove on an adjacent board, the grooves on the lower side are arranged at a distance from the closes edge less than one quarter of the width of the floor board, the top surface of the floor board is flush with the top surface of an adjacent floor board (figure 1).

Svenska does not show the joining profile and the lips when inserted into the groove does not extend beyond the lower side, the lips are parallel, the joining profile is provided with a central cheek section which is comprised by a first and second independently resilient cheeks which cheeks are provided with one tongue each whereby each tongue is received by one notch each so that the adjacent floor boards are guided in a vertical direction, a distance between the plane including the distal end of the edge and the distal end of the shoulder is greater than the width of at least one of the cheek.

Svenska further shows a central cheek having tongues (12) whereby the tongues are received by notches (7) so that the adjacent floorboards are guided in a vertical direction, the lips being parallel (figure 4).

Glover et al (figure 7) shows a profile provided with a central cheek section which is comprised by a first and second independently resilient cheeks (104, 105) which are cheeks are provided with one tongue (106) each whereby the tongues are intended to be received by one notch each so that the adjacent floor boards are built in a vertical direction, each tongue terminating at its respective resilient cheek.

Larrea shows a joining profile (4, figure 1) joining two wall boards together with lips, the joining profile and lips when inserted into the grooves (11) does not extend beyond the lower side of the panel to enable the panels to be stably supported along their major surfaces.

Porter shows a distance between the plane including the distal end of the edge(edge of part 26) and the distal end of the shoulder(edge of shoulder 18) is greater than the width of at least one of the cheek to enable easy and secure holding of the joining profile to the panels.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Svenska to show the joining profile and the lips when inserted into the groove does not extend beyond the lower side as taught by Larrea, the lips being parallel as taught by Svenska figure 4, the joining profile is provided with a central cheek section which is comprised by a first and second independently resilient cheeks which cheeks are provided with one tongue each whereby each tongue is received by one notch each so that the adjacent floor boards are guided in a vertical direction as taught by Glover et al, a distance between the plane including the distal end of the edge and the distal end of the shoulder is greater than the width of at least one of the cheek as taught by Porter because having the profile not extending beyond the lower surface of the panels would enable the panels to be stably supported along their major surface as taught by Larrea, and having the central cheek section with first and second resilient

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cheeks would enable the easy snap fitting of the tongues into the notches as taught by Glover et al, having the lips being parallel would enable the secure anchoring of the profile into the groove as shown in figure 4, and having a distance between the plane including the distal end of the edge and the distal end of the shoulder being greater than the width of at least one of the cheek would enable easy and secure holding of the joining profile to the panels as taught by Porter.

Per claim 4, Svenska as modified by Larrea inherently shows the part of the floorboard located between each edge and its respective groove is thinner than the maximum thickness of the floorboard by means of a recess located on the located side per the teaching of Larrea to have the profile not extending below the lower side.

Per claim 7, Svenska as modified shows all the claimed limitations except for the joining profiles being partially coated with glue or adhesive tape.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Svenska's modified structure to show the joining profiles being partially coated with glue or adhesive tape because it would ensure the joining of the floorboards to the joining profiles.

Per claim 12, Svenska as modified shows the lower sides of the floorboard being flush with the joining profile.

Per claim 20, Svenska as modified shows all the claimed limitations except for the upper surface of the floor boards having a shape selected from the group consisting of square, rhombus and rectangular.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Svenska's modified structure to show the upper surface of the floor boards

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having a shape selected from the group consisting of square, rhombus and rectangular because square, rhombus, rectangular are well known board shapes in the art.

Per claim 21, Svenska as modified shows all the claimed limitations except for the floorboards being partially coated with glue.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Svenska's modified structure to show the floorboards being partially coated with glue because it would ensure the joining of the floorboards to the joining profiles.

3. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svenska (SE8202375-5) in view of Glover et al (5054256).

Svenska shows a joining profile comprising two upstanding lips (11) extending in the same direction, disposed at opposite ends of and perpendicular to a planar longitudinal extending middle section (4) having a midpoint such that the middle section terminates with the upstanding lips, a central cheek section (4) location substantially at the midpoint of the middle section, a cheek extending in the same direction as the lips (11) and not below the middle section, the cheek having first and second tongues (12) extending perpendicular to with respect to the cheek, the profile being formed from an elastic thermoplastic material.

Svenska does not show the central cheek being first and second resilient cheeks, the lips being parallel.

Svenska further discloses the lips being parallel to each other (figure 4).

Glover et al (figure 7) shows a central cheek being first and second resilient cheeks (104, 105).



It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Svenska to show the central cheek being first and second resilient cheeks, the lips being parallel because having first and second resilient cheeks in place of a single cheek would enable the easy snap fitting of the tongues into the notches as taught by Glover et al, and having the lips being parallel would enable the easy anchoring of the lips of the profile into the groove.

Per claim 14, Svenska as modified by Glover et al shows the cheeks being separated by a space large enough to permit deflection of one of the first and second cheeks without contacting the other of the first and second cheeks.

4. Claims 22, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svenska (SE8202375-5) in view of Glover et al (5054256).

Svenska as modified shows all the claimed limitations except for the material being an extruded thermoplastic material, or the material being an injection molding material.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Svenska's modified structure to show the material being an extruded thermoplastic material, or the material being an injection molding material because extrusion and injection molding plastic material are well known material in the profile art as the material is light weight and rust resistant.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svenska (SE8202375-5) in view of Glover et al (5054256).

Svenska as modified shows all the claimed limitations except for the material being a polyolefin.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Svenska's modified structure to show the material being a polyolefin because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, In re Leshin, 125 USPQ 416.

#### **(10) Response to Argument**

With respect to applicant's statement that Svenska does not show a decorative top surface, examiner respectfully states that the uppermost part of the panel is the decorative top surface. A surface is decorative by nature. The structure meets the language as claimed.

With respect to the limitation of "the lips being parallel", examiner respectfully points out that the embodiment as shown in figure 4 of Svenska shows the lips being parallel. Modifying the embodiment of figure 2 with the embodiment of figure 4 results in the lips being parallel as claimed. The argument is thus moot.

With respect to the limitation of "the tongue terminating at its respective cheek", examiner respectfully points out that figure 7 in Glover et al shows the tongue terminating at its respective cheek. Svenska as modified shows the tongue being received by the notch. It appears applicant is referring to other embodiments of Glover et al which are not relied upon. The embodiment which is relied upon to combine with Svenska is the embodiment of figure 7 which shows the tongue terminating at its respective cheek as clearly sets forth above. Also, Glove et al is modifying the primary reference Svenska, and the combined teaching shows applicant's claimed limitations. The argument is thus moot.

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With respect to Larrea, examiner respectfully points out that the reference shows the needed and desired teaching of having the profile not extending beyond its lower side.

Modifying Svenska's structure with the teaching of Larrea would enhance the structure by stably supporting the panel along their major surface. Svenska as modified shows the limitations as claimed. The teaching of upstanding and parallel lips is disclosed in Svenska figure 4 which are relied upon to modify the embodiment of figure 2. Larrea was relied upon to show the desirability of having the profile member not extending beyond the board's lower side. Further modifying Svenska's teaching with Larrea shows the limitations as claimed.

With respect to Porter, examiner respectfully points out that the reference teaches having the distance being greater than the width of at least one of the cheek to allow for the easy snap fitting of the profile onto the panels and holding them together. Modifying Svenska's teaching with Porter enhances the fitability of the structures together and is thus desired. The argument is thus moot.

With respect to claim 7 and 21, examiner respectfully points out that the use of adhesives on joining profile would have been obvious to one having ordinary skill in the art as it ensures the joining of the floorboards to the joining profiles. It is in the knowledge generally available to one of ordinary skill in the art that when joining floorboards together with a joining profile, having adhesives between the joining profile and the floorboards would enhance the bonding/attachment of the floorboard to the joining profiles. It thus would have been obvious to one having ordinary skill in the art at the time of the invention to modify the profiles to show adhesive tape as it would enhance the attachment of the profile to the floor board when secured attachment is desired.

With respect to claim 12, as pointed out above, modifying Svenska such that the lower sides of the floorboards being flush with the joining profile would enable the panels to be stably supported along their major surface as taught by Larrea. The combination is motivated as set forth above.

With respect to claim 6, the limitation was treated as a product by process limitation. The claim is a product by process claim and the joining profiles do not depend on the process of making it. The product-by-process limitation "profiles are manufactured in long sections exceeding the length of a floor board which may be cut to a desired length" would not be expected to impart distinctive structural characteristics to the joining profiles. Therefore, the claimed joining profiles are not different and unobvious joining profiles from the joining profiles of Svenska, or Glover or Porter.

With respect to Glover et al, the reference shows first and second resilient cheeks in figure 7. The cheeks are made of metal or plastics. The cheeks are expansion portions which have greater than the clearance between the upper edges 104b and 105b when unstressed. As the members are made of plastic and having an elongated shape extending from a base, and meant to expand or contract the distance there between due to stress condition, the cheeks are resilient members as claimed.

With respect to claim 14, Svenska as modified by Glover et al shows two resilient cheeks separated by a space therebetween. The space is large enough to permit deflection of the cheeks without the cheeks contacting each other. This is demonstrated by the large space between parts 104 and 105 taught by Glover et al, and it is unclear what dimension/value applicant contemplate for the deflection. Certainly, if applicant bends the cheeks all the way to a very large degree, the

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cheeks will contact. This condition is also true with applicant's elected invention of figures 1a-1c.

With respect to claims 22, 24, applicant states that there is no motivation or suggestion in the prior art to make the profile lightweight and rust resistant, examiner respectfully sets forth that extrusion and injection molding of plastic material to form profiles are well known in the profile art as the material would be light weight and rust resistant. Per KSR, prior art is not limited to the references being applied, but can include common sense, ordinary ingenuity, common understanding of the layman, the specialized understanding of one of ordinary skill in the art. As pointed out above, using extrusion, injection molding to form a plastic profiles would enables the creation of plastic profile which would be resistant to rust and being lightweight. It is common sense that having a profile which is light weight and rust resistant would enhance commercial appeal, easier transportation per less weight, and less replacement part needed due to rusting. The modification would thus have been obvious to one having ordinary skill in the art.

With respect to claim 23, it would have been obvious to one having ordinary skill in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Choosing polyolefin for the thermoplastic material would have been obvious to a designer who desires the strength, modulus of elasticity, rigidity of the material. A person having ordinary skill in the art would know choose a plastic material that is readily available for forming a profile structure which needs to meet a certain characteristics. The argument is thus moot.

**(11) Related Proceeding(s) Appendix**

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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